



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : IACOVELLI, et. al.
Appl. No. : 09/698,265
Filed : October 30, 2000
Title : HEAVY DUTY VEHICLE FLOOR MAT
Group Art Unit : 1772
Examiner : RHEE
Docket No. : 8209.506

GROUP 1700

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APPELLANT'S BRIEF UNDER 37 C.F.R. § 1.192

October 29, 2003

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Washington, D.C. 20231

Dear Sir:

In follow-up to the Notice of Appeal filed October 8, 2003, Appellant respectfully requests the Board of Patent Appeals and Interferences consider the following arguments and reverse the decision of the Examiner in whole.

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(1) Real Party in Interest

The real party in interest is Rally Manufacturing, Inc., assignee to the instant invention.

(2) Related Appeals and Interferences

There are no known related appeals or interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal.

(3) STATUS OF CLAIMS

1. Claims 1-13 were originally filed with the specification on October 30, 2000.

2. In the Official Action dated January 15, 2002, the Examiner rejected claims 1, 2, 8, 9 and 11-13 under 35 U.S.C. 102(e) as being anticipated by Hussaini et al. (USP D4269,679) (hereinafter referred to as Hussaini). Claims 3-7 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hussaini.

3. On April 15, 2002 Appellant filed Response presenting arguments for the patentability of claims 1-13.

4. In the Official Action dated May 23, 2002, the Examiner rejected claims 1-9 and 11-13 under 35 U.S.C. § 103(a) as being unpatentable over Lu (Des. 422,256) (hereinafter referred to as Lu) in view of Sherman (US 6,155,629) (hereinafter referred to as Sherman) and further in view of Wang (Des. 413,850) (hereinafter referred to as Wang). Claim 10 was

rejected under 35 USC §103(a), as being unpatentable over Lu in view of Sherman and further in view of Bell et al. (US 4,399,176) (hereinafter referred to as Bell).

5. On August 23, 2002 Appellant filed Amendment and Request for Reconsideration amending claims 1 and 8, presenting arguments for the patentability of claims 1-13, and adding new claim 14.

6. In the Official Action dated October 31, 2002, the Examiner rejected claims 1 and 8 under 35 USC § 112, first paragraph, as containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Claims 1-9 and 11-13 were rejected under 35 USC §102(e), as being unpatentable by Lu. Claims 10 and 14 were rejected under 35 USC §103(a), as being unpatentable over Lu in view of Wen-Hwang (US 5,215,348) (hereinafter referred to as Wen-Hwang).

7. On February 26, 2003 Appellant filed Amendment and Request for Reconsideration amending claims 1 and 8, presenting arguments for the patentability of claims 1-14, and adding new claims 15-18.

8. In the Official Action dated May 15, 2003, the Examiner rejected claims 1, 8 and 18 under 35 USC § 112, first paragraph, as containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Claim 1 was rejected under 35 USC 102(b) as being anticipated by Primeau (USP 5,482,759) (hereinafter referred to as Primeau). Claims 1-9, 11-13 and 15 were rejected under 35 USC §103(a), as being unpatentable over Lu in view of Primeau. Claims 10 and 14 were rejected under 35 USC §103(a), as being unpatentable over Lu and Primeau in view of Wen-Hwang.

Claims 16-18 were rejected under 35 USC §103(a), as being unpatentable over Lu, Primeau and Wen-Hwang in view of Bailey (USP 5,919,540) (hereinafter referred to as Bailey).

9. On August 15, 2003 Appellant filed Request for Reconsideration amending claims 1, 8 and 18, and presenting arguments for the patentability of claims 1-18.

10. On September 8, 2003 the Examiner issued an Advisory Action rejecting claim 1 under 35 USC 102(b) as being anticipated by Primeau, claims 1-9, 11-13 and 15 under 35 USC §103(a), as being unpatentable over Lu in view of Primeau, claims 10 and 14 under 35 USC §103(a), as being unpatentable over Lu and Primeau in view of Wen-Hwang, and claims 16-18 under 35 USC §103(a), as being unpatentable over Lu, Primeau and Wen-Hwang in view of Bailey.

11. On October 8, 2003, Appellant filed a Notice of Appeal.

(4) STATUS OF AMENDMENT

The Advisory Action finally rejecting claims 1-18 was mailed on September 8, 2003. Appellant then filed a Notice of Appeal on October 8, 2003 to appeal the Examiner's rejection of claims 1-18.

Subsequently, there have been no other papers filed by the Appellant or issued by the U.S. PTO.

(5) SUMMARY OF THE INVENTION

The instant invention is directed to a molded flexible heavy-duty floor mat provided with at least one wear plate fixed upon a bottom surface of the molded mat to protect the floor mat surface from excessive wear. The floor mat surface is texturized with raised protrusions and ridges to provide non-slip shoe traction and shoe scraping surfaces. The floor mat has recessed areas, indentations, and channels to collect scraped or loosened debris and moisture. A peripheral double lip or wall contains the debris and moisture on the floor mat. The at least one wear plate is attached in areas of the floor mat which are most susceptible to wear, such as near the vehicle pedals and in the stepping area of the floor mat. Preferably, the wear plate is made of a metal and is fixed to the bottom surface of the molded mat by a plurality of rivets. The floor mat has back gripping area to secure and maintain the mat against the vehicle floor. The mat may be readily cleaned by removing the entire mat out from the vehicle.

(6) ISSUES

1. Whether claim 1 is patentable over Primeau.
2. Whether claim 1-9, 11-13 and 15 are patentable over Lu in view of Primeau.
3. Whether claim 10 and 14 are patentable over Lu and Primeau in view of Wen-Hwang.
4. Whether claim 16-18 are patentable over Lu, Primeau and Wen-Hwang in view of Bailey.

(7) GROUPING OF THE CLAIMS

Claims 1-5 and 15 stand and fall together.

Claim 6 is separately patentable.

Claim 7 is separately patentable.

Claims 8-9 and 12-13 stand and fall together.

Claim 10 is separately patentable.

Claim 11 is separately patentable.

Claim 14 is separately patentable.

Claim 16 is separately patentable.

Claim 17 is separately patentable.

Claim 18 is separately patentable.

(8) ARGUMENTS

Sub-paragraph (i)

This sub-paragraph is not applicable to the instant appeal in so far as there are no rejections under 35 U.S.C. § 112, first paragraph.

Sub-paragraph (ii)

This sub-paragraph is not applicable to the instant appeal in so far as there are no rejections under 35 U.S.C. § 112, second paragraph.

Sub-Paragraph (iii)

Claim 1 stands rejected under 35 USC 102(b) as being anticipated by Primeau. It is noted that claim 1 is an independent claim.

Primeau fails to disclose at least one wear plate fixed upon the bottom surface of the molded mat. In fact, the floor mat of Primeau has a reversible pan portion 24, which is not a wear plate, but rather provided to collect fluids or contaminants that adhere to the driver's feet as it made of a plurality of spaced apart ridges 28 provided to scrape-off any contaminant adhering to the sole of the shoes.

The Examiner broadly defines the wear plate as "almost anything ... as long as use is applied to the area", whereas the present application specifically defines the wear plate as a plate provided "to protect the floor mat surface from excessive wear." Clearly, the reversible pan portion of Primeau provided to collect fluids or contaminants, cannot be defined as the wear plate.

Moreover, claim 1 recites that the wear plate is fixed upon the recessed bottom surface of the at least one third area of the molded mat. The Random House Webster's College Dictionary (1999 Second Random House Edition), defines the word "fixed" as "attached or placed so as to be firm and not readily movable". That explicitly implies that the wear plate of

the present invention is a separate element of the floor mat non-removably secured (or fixed) to the third area of the floor mat. Contrary to the present invention, the pan portion 24 of Primeau is a reversible, so that is readily removable from the recessed area 22 of the floor mat, thus not fixed to the floor mat.

Therefore, claim 1 defines the invention over Primeau.

Sub-paragraph (iv)

Claims 1-9, 11-13 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Primeau. It is noted that claim 1 is independent claim, claims 2 and 15 depend upon claim 1, claim 3 depends upon claim 2, claim 4 depends upon claim 3, claims 5-7 depend upon claim 4, claim 8 is independent claim, claim 9 depends upon claim 8, and claims 11-13 depend upon claim 8.

Regarding claim 1: The Examiner alleges that Lu teaches all the limitations of claim 1 except for the at least one third area provided within the first area of the mat and adjacent to the texturized surface pattern. As clearly shown in the drawings, the floor mat of Lu is a single-piece molded floor mat having no wear plate. The Examiner further concedes that Primeau discloses a removable portion that can be cleanable out of the car. Thus, the Primeau fails to disclose the wear plate fixed to the molded mat.

Contrary to Primeau, as was argued above in the sub-paragraph (iii) regarding the rejection of claim 1 under 35 USC 102(b), claim 1 of the present application recites the wear plate that is fixed (or non-removably secured) to the molded mat. Therefore, even if combination and modification of Lu and Primeau suggested by the Examiner could be made, the resulting floor mat still would lack the wear plate that is fixed to the molded mat.

Moreover, the Examiner fails to prove as to why one having ordinary skill in the art would have found the claimed invention to be obvious in light of the teachings of Lu and Primeau. Examiner's statement that modifications of Lu and Primeau to meet the claimed invention would have been obvious to one having ordinary skill in the art at the time the invention was made, is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App.&Inter. 1993).

MPEP 2143.01 specifically states that "a statement that modifications of the prior art to meet the claimed invention would have been " 'well within the ordinary skill of the art at the time the claimed invention was made' " because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000)".

MPEP 2143.01 further states that the mere fact that references can be combined does not render the resultant combination obvious unless the references suggest the desirability of the combination, citing *In Re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). There is no suggestion to support the Examiner's assertion.

Regarding claim 6: Both Lu and Primeau lack a toe plate located in the upper section of the mat.

Regarding claim 7: Both Lu and Primeau lack the toe plate located in the upper section of the mat and a heel plate located in the lower section of the mat.

Regarding claim 8: The Examiner alleges that Lu teaches all the limitations of claim 8 except for the at least one third area provided within the first area of the mat and adjacent to the texturized surface pattern. As clearly shown in the drawings, the floor mat of Lu is a single-piece molded floor mat having no wear plate. The Examiner further concedes that Primeau discloses a removable portion that can be cleanable out of the car. Thus, the Primeau fails to disclose the wear plate fixed to the molded mat.

Contrary to Primeau, claim 8 of the present application recites the wear plate that is fixed (or non-removably secured) to the molded mat. Therefore, even if combination and modification of Lu and Primeau suggested by the Examiner could be made, the resulting floor mat still would lack the wear plate that is fixed to the molded mat.

Moreover, the Examiner fails to prove as to why one having ordinary skill in the art would have found the claimed invention to be obvious in light of the teachings of Lu and Primeau. Examiner's statement that modifications of Lu and Primeau to meet the claimed invention would have been obvious to one having ordinary skill in the art at the time the invention was made, is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App.&Inter. 1993). Clearly, the prior art cited by the Examiner fail to provide any suggestion or motivation to combine teachings of Lu and Primeau.

Furthermore, as stated in In re Kotzab, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000):

Most if not all inventions arise from a combination of old elements. Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole

claimed invention. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant [citations omitted].

Regarding claim 11: Both Lu and Primeau lack the toe plate located in the upper section of the mat and a heel plate located in the lower section of the mat.

Claims 10 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lu and Primeau in view of Wen-Hwang. It is noted that claim 10 depends upon claim 8, and claim 14 depends upon claim 1.

Lu and Primeau fail to disclose the vehicle floor mat including the metal wear plate fixed to the molded mat. Wen-Hwang discloses a pedal piece made of plastic material. Therefore, none of the references cited by the Examiner teaches the wear plate made of metal. The Examiner further alleges that it would have been obvious to one of ordinary skill in the art to provide a metal plate instead of plastic.

However, the Examiner fails to prove as to why one having ordinary skill in the art would have found the claimed invention to be obvious in light of the teachings of Lu, Primeau and Wen-Hwang. Examiner's statement that it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine floor mats of Lu, Primeau and Wen-Hwang to meet the claimed invention by selecting metal instead of plastic, is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references cited. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App.&Inter. 1993). MPEP 2143.01 specifically states that the mere fact that references can be combined does not render the resultant combination obvious unless the references

suggest the desirability of the combination, citing *In Re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Clearly, Lu, Primeau and Wen-Hwang give no indication, motivation, or suggestion of desirability to use the metal wear plate instead of the plastic pedal piece.

Furthermore, the plastic pedal piece of Wen-Hwang is removably attached to the foot pad through several Velcro strips (see column 3, lines 28-30). Thus, Wen-Hwang fails to disclose the vehicle floor mat including the metal plate fixed (non-removably secured) to the molded mat. Therefore, even if combination and modification of Lu, Primeau and Wen-Hwang suggested by the Examiner could be made, the resulting floor mat still would lack the metal plate that is fixed to the molded mat.

Claims 16-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lu, Primeau and Wen-Hwang in view of Bailey. It is noted that claim 16 depends upon claim 10, claim 17 depends upon claim 14, and claim 18 is independent claim.

The Examiner admits that Wen-Hwang fails to disclose the metal plate fixed to the bottom surface of the at least one third area of the molded mat by the plurality of rivets passing through the floor mat. Then, the Examiner erroneously asserts that Bailey teaches a plurality of rivets passing through the floor mat. The Examiner refers to col. 3, lines 45-47 of Bailey that teaches a pair of locking posts 22 adapted to retain a removable grill 12, thus, apparently, interpreting the locking posts 22 as rivets.

Contrary to the Examiner's allegation, Bailey teaches the removable grill 12 (see column 3, line 17) made of plastic or the textile faced insert 42 (column 4, line 36) and fastened to the floor mat by a pair of locking posts 22 and series of supports 24 and base supported registration supports 28.

It is well known to those skilled in the art that the rivet is "a metal pin for passing

through holes in two or more pieces to hold them together, having a head at one end, the other end being hammered into a head after insertion.” (the Random House Webster’s College Dictionary (1999 Second Random House Edition)). As clearly disclosed and illustrated by Bailey, the locking posts 22 and the supports 24 and 28 are not rivets as they extend upwardly from base 18 (see column 3, line 44), not pass through the floor mat as recited in claims 16-18.

Moreover, it is well known to those skilled in the art that parts connected by rivets are non-removably secured (or fixed) to each other. Thus, as the grill 12 is removable, it cannot be interpreted as riveted to the base 18. Therefore, even if combination and modification of Lu, Primeau, Wen-Hwang and Bailey suggested by the Examiner could be made, the resulting floor mat still would lack the metal wear plate that is fixed to the floor mat by a plurality of rivets passing through the floor mat.

Moreover, the prior art provides no suggestion or motivation to combine teachings of Lu, Primeau, Wen-Hwang and Bailey.

Thus, because of the all of the above reasons, the rejection of claims 16-18 under 35 U.S.C. § 103(a) is improper.

Sub-paragraph (v)

This sub-paragraph is not applicable to the instant appeal in so far as the final rejection does not raise any issues other than those referred to in sub-paragraphs (i)-(iv).

Conclusion

The foregoing arguments detail the failure of the Examiner's 35 U.S.C. 102(b) and 103(a) based rejections to survive scrutiny under the requirements of such rejections. Thus, the Examiner's rejections should be reversed and such a decision by the Board is respectfully sought.

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09/698,265

In re Iacovelli, M. et al.

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(9) APPENDIX OF CLAIMS ON APPEAL

1. A vehicle floor mat comprising:

a molded flexible mat having a raised peripheral lip provided on side edges of the molded mat;

a first area contained within the peripheral lip, said first area having a recessed bottom surface and a plurality of raised protrusions extending from said bottom surface thereby providing a texturized surface;

at least one third area having a substantially smooth bottom surface, said at least one third area provided within said first area of the mat and adjacent to said texturized surface pattern; and

at least one wear plate fixed upon said bottom surface of said at least one third area of said molded mat.

2. The vehicle floor mat according to claim 1, further comprising:
a second area contained within the peripheral lip, said second area having a recessed floor and a plurality of elongated parallel ridges protruding from the recessed floor.

3. The vehicle floor mat according to claim 2, wherein said second area further comprises a plurality of raised bumps on the recessed floor in between the parallel ridges.

4. The vehicle floor mat according to claim 3, wherein said first area of the molded mat generally covers an upper section and a lower section of a substantial floor area of the mat, and said second area of the molded mat generally covers a middle section of the substantial floor area of the mat.

5. The vehicle floor mat according to claim 4, wherein said at least one wear plate comprises a heel plate located in the lower section of the mat.

6. The vehicle floor mat according to claim 4, wherein said at least one wear plate comprises a toe plate located in the upper section of the mat.

7. The vehicle floor mat according to claim 4, wherein said at least one wear plate comprises a toe plate located in the upper section of the mat and a heel plate located in the lower section of the mat.

8. A vehicle floor mat comprising:

a molded flexible mat having a front surface with a raised peripheral lip provided on side edges of the molded mat;

a first area contained within the peripheral lip, said first area having a first texturized surface pattern;

a second area contained within the peripheral lip, said second area having a second texturized surface pattern different from said first pattern, wherein said first area of the molded mat generally covers an upper section and a lower section of a substantial floor area of the mat, and said second area of the molded mat generally covers a middle section of the substantial floor area of the mat;

at least one third area having a substantially smooth recessed bottom surface, said at least one third area provided within said first area of the mat adjacent to said first texturized surface pattern; and

at least one wear plate fixed upon said recessed bottom surface of said at least one third area of said molded mat.

9. The vehicle floor mat according to claim 8, wherein said at least one wear plate is surrounded at its edges by a contoured wall, raised and extending up from the bottom surface.

10. The vehicle floor mat according to claim 8, wherein said at least one wear plate comprises a metal plate having a texturized surface pattern.

11. The vehicle floor mat according to claim 8, wherein said at least one wear plate comprises a toe plate located in the upper section of the mat and a heel plate located in the lower section of the mat.

12. The vehicle floor mat according to claim 8, further comprising a back side of the molded mat, said back side having at least one gripping section for gripping the vehicle floor, said gripping section having a plurality of outwardly extending protrusions.

13. The vehicle floor mat according to claim 12 wherein said at least one gripping section located on the back side of the mat opposite said wear plate fixed to the front surface of the mat.

14. The vehicle floor mat according to claim 1, wherein said at least one wear plate comprises a metal plate having a texturized surface pattern.

15. The vehicle floor mat according to claim 1, wherein said at least one third area is contained within a surrounding wall raised and extending up from said bottom surface.

16. The vehicle floor mat according to claim 10, wherein said metal plate is fixed upon said smooth bottom surface of said at least one third area of the molded mat by a plurality of rivets passing through said floor mat.

17. The vehicle floor mat according to claim 14, wherein said metal plate is fixed upon said bottom surface of said at least one third area of the molded mat by a plurality of rivets passing through said floor mat.

18. A vehicle floor mat comprising:

a molded flexible mat having a front surface with a raised peripheral lip provided on side edges of the molded mat;

a first area contained within the peripheral lip, said first area having a first texturized surface pattern;

a second area contained within the peripheral lip, said second area having a second texturized surface pattern different from said first pattern, wherein said first area of the molded mat generally covers an upper section and a lower section of a substantial floor area of the mat, and said second area of the molded mat generally covers a middle section of the substantial floor area of the mat;

at least one third area having a recessed bottom surface; and

at least one metal plate having a texturized surface pattern and fixed upon said recessed bottom surface of said at least one third area of the molded mat, said at least one metal plate is surrounded at its edges by a contoured wall raised and extending up from said recessed bottom surface,

wherein said metal plate is fixed upon said recessed bottom surface of said at least one third area of said molded mat by a plurality of rivets passing through said floor mat.